

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
RIO MAR ASSOCIATES, L.P., S.E., a Delaware Limited Partnership, d/b/a THE WESTIN RIO MAR BEACH RESORT,

Case No. 07 CV 8227 (GBD)

Plaintiff,

**ORDER TO SHOW CAUSE**

-against-

MIXSHOW POWER SUMMIT, INC., a New York corporation; THE POWER SUMMIT, INC., a New York corporation; RPM MARKETING & PROMOTIONS, INC., a New York corporation; and RENE McLEAN, a New York resident,

Defendants.

-----X

Upon making and filing of the declaration of Peter M. Agulnick, Esq., dated November 1, 2007, the declaration of RENE McLEAN, dated October 31, 2007, and all annexed exhibits, and sufficient cause having been shown, LET the parties to this case show cause at the United States District Court for the Southern District of New York, located at the courthouse at \_\_\_\_\_, Room \_\_\_\_\_, New York , NY, on \_\_\_\_\_, 2007 at \_\_\_\_:\_\_\_\_ A.M./P.M., or as soon thereafter as counsel and parties can be heard, why an Order shall not be issued containing the following relief:

(A) Pursuant to Fed. R. Civ. Pro. 12(b)(5) and 60(b)(3), dismissing this case and vacating the default judgment that this Court has issued after false representations that Defendants have been properly served pursuant to the Federal Rules of Civil Procedure; and

(B) such other relief that is appropriate.

**ORDERED**, pending the hearing of this application enforcement and execution of the Default Judgment is hereby stayed and all restraints, if any, on accounts are hereby lifted; and it is further,

**ORDERED**, it shall be considered sufficient service for a copy of this Order and the papers upon which it is based to be served by either this Court or movant by filing this Order and the papers upon which it is based with the Court's ECF system on or before \_\_\_\_\_, 20\_\_\_\_.

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Judge, U.S. District Court

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
RIO MAR ASSOCIATES, L.P., S.E., a Delaware Limited  
Partnership, d/b/a THE WESTIN RIO MAR BEACH  
RESORT,

Case No. 07 CV 8227 (GBD)

Plaintiff,

**DECLARATION OF**  
**PETER M. AGULNICK**

-against-

MIXSHOW POWER SUMMIT, INC., a New York  
corporation; THE POWER SUMMIT, INC., a New York  
corporation; RPM MARKETING & PROMOTIONS,  
INC., a New York corporation; and RENE McLEAN, a  
New York resident,

Defendants.

-----X

PETER M. AGULNICK, pursuant to 28 U.S.C. §1746, states the following under penalty  
of perjury:

1. I am a principal of the law firm of Peter M. Agulnick, P.C., counsel of record  
for Defendants THE POWER SUMMIT, INC., RPM KARKETING & PROMOTIONS, and  
RENE McLEAN (hereinafter collectively “my clients”).

2. I submit this declaration in support of the present motion seeking an Order  
containing the following relief:

(A) Pursuant to Fed. R. Civ. Pro. 12(b)(5) and 60(b)(3), dismissing this case  
and vacating the default judgment that this Court has issued after false representations  
that Defendants have been properly served pursuant to the Federal Rules of Civil  
Procedure; and

(B) such other relief that is appropriate.

3. RENE McLEAN's attached declaration states that he has never been afforded proper service of process. Thus, Plaintiff has improperly procured a default judgment against my clients as is explained below.

4. Plaintiff purports to have served RENE McLEAN, personally, and on behalf of the corporate defendants as a supposed "agent." A copy of Plaintiff's affidavits of service are filed here as **Exhibit A**.

5. Plaintiff's Affidavits of Service state that Plaintiff's process server delivered documents to RENE McLEAN but describe an entirely different person. The Affidavits of Service describe a white male when, in fact, RENE McLEAN is actually African American (McLean Declaration at ¶ 4.) In addition, the other description of RENE McLEAN is inaccurate as well (McLean Declaration at ¶ 4).

6. Prior to the present litigation, Plaintiff's counsel conducted a face-to-face deposition of RENE McLEAN in a related state-court action. Therefore, Plaintiff's counsel must have known that RENE McLEAN is not white and that his process server failed to properly serve RENE McLEAN in accordance with the Federal Rules of Civil Procedure.

7. Moreover, Plaintiff's counsel should never have moved for a default judgment and submitted an Affidavit in Support of Application for Certificate of Default adopting erroneous Affidavits of Service attached to his papers. (A copy of Plaintiffs' counsel's Affidavit containing the erroneous Affidavits of Service are annexed here as **Exhibit B**, and the default judgment Plaintiff improperly obtained is annexed here as **Exhibit C**).

8. Based upon the above, Plaintiff has failed to effectuate service of process upon my clients, which deprives this Court of personal jurisdiction. This Court should, therefore, dismiss Plaintiff's case as against my clients and vacate the default judgment.

9. Finally, despite that I personally represented RENE McLEAN in a prior related proceeding in state court where Plaintiff's counsel deposed RENE McLEAN, Plaintiff's counsel never sent me a courtesy copy of his motion for a default judgment or any of the pleadings for the present case. Although, perhaps, not required because I filed an appearance in the state action but had not yet done so in the present federal action, it certainly was contrary to well-established customs and courtesies practiced by members of the New York state and Federal bar.

10. After I found out that Plaintiff had obtained a default judgment against my clients, I called Plaintiff's counsel and informed him that RENE McLEAN was never properly served and that his affidavits of service were obviously erroneous. In addition, I followed up by sending Plaintiff's counsel a letter, a copy of which is annexed here as **Exhibit D**.

11. Notwithstanding, Plaintiff's counsel has refused to stipulate to vacate the default judgment. I even told Plaintiff's counsel that I would have, as a professional courtesy, accepted service for my clients if he were to stipulate to vacate the default judgment so that I would not have to burden the parties -- and this Court -- with unnecessary motion practice and the need for Plaintiff to bring a second action after the present one is dismissed. Plaintiff's counsel still refused.

12. Accordingly, I was forced to make the present motion to this Court seeking to dismiss Plaintiff's action and to vacate the default judgment that was improperly obtained against my clients.

13. There has been no prior request for this relief.

**WHEREFORE**, Defendants THE POWER SUMMIT, INC., RPM KARKETING & PROMOTIONS, and RENE McLEAN request that this Court issue an Order containing the following relief:

(A) Pursuant to Fed. R. Civ. Pro. 12(b)(5) and 60(b)(3), dismissing this case and vacating the default judgment that this Court has issued after false representations that Defendants have been properly served pursuant to the Federal Rules of Civil Procedure; and

(B) such other relief that is appropriate.

Dated: New York, New York  
November 1, 2007

/S/

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PETER M. AGULNICK (PA 5030)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
RIO MAR ASSOCIATES, L.P., S.E., a Delaware Limited Partnership, d/b/a THE WESTIN RIO MAR BEACH RESORT,

Case No. 07 CV 8227 (GBD)

Plaintiff,

**DECLARATION OF RENE  
McLEAN**

-against-

MIXSHOW POWER SUMMIT, INC., a New York corporation; THE POWER SUMMIT, INC., a New York corporation; RPM MARKETING & PROMOTIONS, INC., a New York corporation; and RENE McLEAN, a New York resident,

Defendants.

-----X

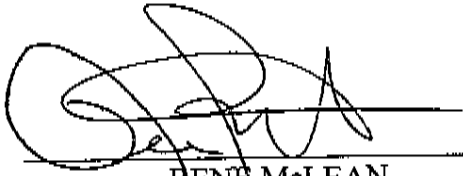
RENE McLEAN, pursuant to 28 U.S.C. §1746, states the following under penalty of perjury:

1. I am one of the Defendants named in the caption of this case.
2. I was never personally handed a copy of a Summons and Complaint for this case. My attorney informs me that, under the Federal Rules of Civil Procedure, Plaintiff has failed to properly effectuate service of process.
3. My attorney has also informed me that Plaintiff has filed affidavits of service (copies of which are annexed here as **Exhibit C**) that purport to serve me on behalf of myself and the other corporate Defendants. Those affidavits are false as is explained below:
4. Plaintiff's affidavits describe me as a white person. I am not white. I am an African American. Moreover the other physical description of me is wrong as well.

5. Clearly, Plaintiff's affidavits are false and I was never personally served with a copy of the summons and complaint.

Dated: New York, New York

10/31, 2007

  
\_\_\_\_\_  
RENE McLEAN



# ***Exhibit A***

ABC PROCESS SERVICE, INC.  
Attorney:  
RUDNER LAW OFFICES  
Index No. 07CIV8227  
Date Filed 09/20/2007  
Office No. RL11133W

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

RIO MAR ASSOCIATES, L.P. S.E., A DELAWARE LIMITED  
(PLAINTIFF)  
PARTNERSHIP, D/B/A THE WESTIN RIO MAR BEACH RESORT  
against  
(DEFENDANT)  
MIXSHOW POWER SUMMIT, INC., A NEW YORK CORPORATION, ETAL;

---

STATE OF NEW YORK, COUNTY OF NEW YORK SS:

SCHADRAC LAGUERRE being duly sworn deposes and says:  
I am over 18 years of age, not a party to this action and reside in the State of New York:

That on the 25 day of September 2007 at 3:34 PM , at  
33 W 19TH ST;NY, NY

I SERVED the SUMMONS IN A CIVIL ACTION, COMPLAINT AND RULE 7.1 STATEMENT upon

RENE MCLEAN, A NEW YORK RESIDENT  
the defendant herein named by delivering to and leaving a true copy of said  
SUMMONS IN A CIVIL ACTION, COMPLAINT AND RULE 7.1 STATEMENT with RENE MCLEAN,  
A NEW  
YORK RESIDENT said defendant personally. Deponent describes person served as  
aforesaid to the best of deponents ability at the time and circumstances of  
service as follows:

Sex MALE , Color WHITE, Hair BLACK, app.age 45 YRS, app.ht 5'9", app.wt  
160 LBS

That at the time of such service I knew the person so served as aforesaid to  
be the same person mentioned and described in the said SUMMONS IN A CIVIL  
ACTION, COMPLAINT AND RULE 7.1 STATEMENT as the defendant in this action. That at  
the time  
of service aforesaid, I asked person so served or person spoken to whether  
the defendant herein was in the military service of the State of N.Y. or the  
United States and received a negative reply. Upon information and belief  
based upon the conversation and observation as aforesaid I aver that the  
defendant is not in the military service of the State of N.Y. or the United  
States as that term is defined in the statutes of the State of N.Y. or the  
Federal Soldiers and Sailors Civil Relief Act.

SWORN to before me this 27  
day of September 2007

JAY BRODSKY  
Notary Public, State of New York  
No. 31-468371  
Qualified in New York County  
Commission Expires Feb. 2, 2011

---

SCHADRAC LAGUERRE

ABC PROCESS SERVICE, INC.  
Attorney:  
RUDNER LAW OFFICES  
Index No. 07CIV8227  
Date Filed 09/20/2007  
Office No. RL11133WD

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

RIO MAR ASSOCIATES, L.P., S.E., A DELAWARE LIMITED  
(PLAINTIFF)  
PARTNERSHIP, D/B/A THE WESTIN RIO MAR BEACH RESORT  
against  
(DEFENDANT)  
MIXSHOW POWER SUMMIT, INC., A NEW YORK CORPORATION, ETAL;

---

STATE OF NEW YORK, COUNTY OF NEW YORK SS:

SCHADRAC LAGUERRE being duly sworn, deposes and says  
that he is over the age of 18 years, not a party to the action, and resides in  
the State of New York:

That on the 25 day of September 2007 at 3:34 PM, at

33 W 19TH ST; NY, NY

he served the annexed SUMMONS IN A CIVIL ACTION, COMPLAINT AND RULE 7.1  
STATEMENT upon

MIXSHOW POWER SUMMIT, INC., A NEW YORK CORPORATION, in this action, by  
delivering to and leaving with said MR. RENE MCLEAN, MANAGING AGENT a true copy  
thereof.

Deponent describes person served as aforesaid to the best of deponents ability  
at the time and circumstances of service as follows:

Sex MALE, Color WHITE, Hair BLACK, app.age 45 YRS, app.ht 5'9", app.wt 160  
LBS

DEPONENT FURTHER SAYS, that he knew the Corporation so served as aforesaid to be  
the Corporation mentioned and described in the said SUMMONS IN A CIVIL ACTION,  
COMPLAINT AND RULE 7.1. STATEMENT.

SWORN to before me this 27  
day of September 2007

JAY BRODSKY  
Notary Public, State of New York  
No. 31-4689271  
Qualified in New York County  
Commission Expires Feb 2, 2011

---

SCHADRAC LAGUERRE  
License No.: 1021952 :bb

ABC PROCESS SERVICE, INC.  
Attorney:  
RUDNER LAW OFFICES  
Index No. 07CIV8227  
Date Filed 09/20/2007  
Office No. RL11133WC

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

RIO MAR ASSOCIATES, L.P., S.E, A DELAWARE LIMITED  
(PLAINTIFF)  
PARTNERSHIP, D/B/A THE WESTIN RIO MAR BEACH RESORT  
against  
(DEFENDANT)  
MIXSHOW POWER SUMMIT, INC., A NEW YORK CORPORATION, ETAL;

---

STATE OF NEW YORK, COUNTY OF NEW YORK SS:

SCHADRAC LAGUERRE being duly sworn, deposes and says  
that he is over the age of 18 years, not a party to the action, and resides in  
the State of New York:

That on the 25 day of September 2007 at 3:34 PM , at

33 W 19TH ST; NEW YORK, NY

he served the annexed SUMMONS IN A CIVIL ACTION, COMPLAINT AND RULE 7.1  
STATEMENT upon

THE POWER SUMMIT, INC. A NEW YORK CORPORATION in this action, by delivering to  
and leaving with said MR. RENE MCLEAN, MANAGING AGENT a true copy thereof.  
Deponent describes person served as aforesaid to the best of deponents ability  
at the time and circumstances of service as follows:

Sex MALE , Color WHITE, Hair BLACK, app.age 45 YRS, app.ht 5'9", app.wt 160  
LBS

DEPONENT FURTHER SAYS, that he knew the Corporation so served as aforesaid to be  
the Corporation mentioned and described in the said SUMMONS IN A CIVIL ACTION,  
COMPLAINT AND RULE 7.1. STATEMENT.

SWORN to before me this 27  
day of September 2007

JAY BRODSKY  
Notary Public, State of New York  
No. 31-4683271  
Qualified in New York County  
Commission Expires Feb/2, 2011

---

SCHADRAC LAGUERRE  
License No. 1021952 :bb

ABC PROCESS SERVICE, INC.  
Attorney:  
RUDNER LAW OFFICES  
Index No. 07CIV8227  
Date Filed 09/20/2007  
Office No. RL11133WB

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

RIO MAR ASSOCIATES, L.P., S.E., A DELAWARE LIMITED  
(PLAINTIFF)  
PARTNERSHIP, D/B/A THE WESTIN RIO MAR BEACH RESORT  
against  
(DEFENDANT)  
MIXSHOW POWER SUMMIT, INC., A NEW YORK CORPORATION, ETAL;

---

STATE OF NEW YORK, COUNTY OF NEW YORK SS:

SCHADRAC LAGUERRE being duly sworn, deposes and says  
that he is over the age of 18 years, not a party to the action, and resides in  
the State of New York:

That on the 25 day of September 2007 at 3:34 PM , at

33 W 19TH ;NY, NY

he served the annexed SUMMONS IN A CIVIL ACTION, COMPLAINT AND RULE 7.1  
STATEMENT upon

RPM MARKETING & PROMOTION, INC., in this action, by delivering to and leaving  
with said MR. RENE MCLEAN, MANAGING AGENT a true copy thereof.  
Deponent describes person served as aforesaid to the best of deponents ability  
at the time and circumstances of service as follows:

Sex MALE , Color WHITE, Hair BLACK, app.age 45 YRS, app.ht 5'9", app.wt 160  
LBS

DEPONENT FURTHER SAYS, that he knew the Corporation so served as aforesaid to be  
the Corporation mentioned and described in the said SUMMONS IN A CIVIL ACTION,  
COMPLAINT AND RULE 7.1. STATEMENT.

SWORN to before me this 27  
day of September 2007

---

SCHADRAC LAGUERRE  
License No. 1021952 :bb

JAY BRODSKY  
Notary Public, State of New York  
No. 31-463271  
Qualified in New York County  
Commission Expires Feb. 2, 2011

# ***Exhibit B***

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
RIO MAR ASSOCIATES, L.P., S.E., a  
Delaware Limited Partnership, d/b/a THE WESTIN  
RIO MAR BEACH RESORT,

Civ. Action No. 07 CV 8227 (GBD)

**AFFIDAVIT IN SUPPORT  
OF APPLICATION  
FOR CERTIFICATE  
OF DEFAULT**

Plaintiff,

-against-

MIXSHOW POWER SUMMIT, INC., a  
New York corporation; THE POWER SUMMIT,  
INC., a New York corporation; RPM MARKETING  
& PROMOTIONS, INC., a New York corporation;  
and RENE McLEAN, a New York resident,

Defendants.

\_\_\_\_\_  
STATE OF NEW YORK     )  
                                  ) ss:  
COUNTY OF NEW YORK    )

DAVID R. TEECE, being duly sworn, deposes and says:

1. I am an attorney with the Rudner Law Offices, counsel for Plaintiff Rio Mar Associates, L.P. S.E., d/b/a The Westin Rio Mar Resort, and I submit this affidavit in support of Plaintiff's Application for Certificate of Default to the Clerk pursuant to Fed. R. Civ. Pro. 55(a) and Local Rule 55.1.

2. On September 20, 2007, Plaintiff filed a Complaint against Defendants Mixshow Power Summit, Inc.; The Power Summit, Inc.; RPM Marketing & Promotions, Inc.; and Rene McLean.

4. The above-titled action was commenced against Defendant Rene McLean by

personal service of a Summons and Complaint served pursuant to Fed. R. Civ. Pro. 5(b)(A)(i) at 33 W. 19<sup>th</sup> Street, New York, New York on the 25<sup>th</sup> day of September, 2007. A true and correct copy of the Affidavit of Service is attached hereto as Exhibit A.

5. The above-titled action was commenced against Defendant Mixshow Power Summit, Inc. by personal service of a Summons and Complaint upon Rene McLean, managing agent, served pursuant to Fed. R. Civ. Pro. 5(b)(A)(i) at 33 W. 19<sup>th</sup> Street, New York, New York on the 25<sup>th</sup> day of September, 2007. A true and correct copy of the Affidavit of Service is attached hereto as Exhibit B.

6. The above-titled action was commenced against Defendant The Power Summit, Inc. by personal service of a Summons and Complaint upon Rene McLean, managing agent, served pursuant to Fed. R. Civ. Pro. 5(b)(A)(i) at 33 W. 19<sup>th</sup> Street, New York, New York on the 25<sup>th</sup> day of September, 2007. A true and correct copy of the Affidavit of Service is attached hereto as Exhibit C.

7. The above-titled action was commenced against Defendant RPM Marketing & Promotions, Inc. by personal service of a Summons and Complaint upon Rene McLean, managing agent, served pursuant to Fed. R. Civ. Pro. 5(b)(A)(i) at 33 W. 19<sup>th</sup> Street, New York, New York on the 25<sup>th</sup> day of September, 2007. A true and correct copy of the Affidavit of Service is attached hereto as Exhibit D.

5. Neither Defendant Rene McLean nor any other defendant is an infant, in the military, or an incompetent person.

6. Pursuant to Fed. R. Civ. Pro. 12(a)(A), the time for Defendants to answer or move with respect to the Complaint has expired, and no Defendants have answered or moved with



respect to the Complaint.

7. The Defendants' time to plead has not been extended and they are now in default in pleading.

8. The Complaint to which no response had been made was properly served upon all Defendants pursuant to Fed. R. Civ. Pro. 5(b)(2)(A).

FURTHER AFFIANT SAYETH NAUGHT

DR.T.

David R. Teece

Sworn to before me this  
16 day of October, 2007.

Althea M. Dorsett

Notary Public

ALTHEA M DORSETT  
NOTARY PUBLIC-STATE OF NEW YORK  
NO. 01006037445  
QUALIFIED IN BRONX COUNTY  
MY COMMISSION EXPIRES APRIL 16, 2008

# **EXHIBIT A**

ABC PROCESS SERVICE, INC.  
Attorney:  
RUDNER LAW OFFICES  
Index No. 07CIV8227  
Date Filed 09/20/2007  
Office No. RL11133W

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RIO MAR ASSOCIATES, L.P. S.E., A DELAWARE LIMITED  
(PLAINTIFF)  
PARTNERSHIP, D/B/A THE WESTIN RIO MAR BEACH RESORT  
against  
(DEFENDANT)  
MIXSHOW POWER SUMMIT, INC., A NEW YORK CORPORATION, ETAL;

---

STATE OF NEW YORK, COUNTY OF NEW YORK SS:

SCHADRAC LAGUERRE being duly sworn deposes and says:  
I am over 18 years of age, not a party to this action and reside in the State of New York:

That on the 25 day of September 2007 at 3:34 PM , at  
33 W 19TH ST;NY, NY

I SERVED the SUMMONS IN A CIVIL ACTION, COMPLAINT AND RULE 7.1 STATEMENT upon

RENE MCLEAN, A NEW YORK RESIDENT  
the defendant herein named by delivering to and leaving a true copy of said  
SUMMONS IN A CIVIL ACTION, COMPLAINT AND RULE 7.1 STATEMENT with RENE MCLEAN,  
A NEW  
YORK RESIDENT said defendant personally. Deponent describes person served as  
aforesaid to the best of deponents ability at the time and circumstances of  
service as follows:

Sex MALE , Color WHITE, Hair BLACK, app.age 45 YRS, app.ht 5'9", app.wt  
160 LBS

That at the time of such service I knew the person so served as aforesaid to  
be the same person mentioned and described in the said SUMMONS IN A CIVIL  
ACTION, COMPLAINT AND RULE 7.1 STATEMENT as the defendant in this action. That at  
the time  
of service aforesaid, I asked person so served or person spoken to whether  
the defendant herein was in the military service of the State of N.Y. or the  
United States and received a negative reply. Upon information and belief  
based upon the conversation and observation as aforesaid I aver that the  
defendant is not in the military service of the State of N.Y. or the United  
States as that term is defined in the statutes of the State of N.Y. or the  
Federal Soldiers and Sailors Civil Relief Act.

SWORN to before me this 27  
day of September 2007

JAY BRODSKY  
Notary Public, State of New York  
No. 31-468371  
Qualified in New York County  
Commission Expires Feb. 2, 2011

SCHADRAC LAGUERRE

License No.: 1021952 :bb

JAY BRODSKY  
Notary Public, State of New York  
No. 31-4683271  
Qualified in New York County  
Commission Expires Feb. 2, 2011

# **EXHIBIT B**

ABC PROCESS SERVICE, INC.  
Attorney:  
RUDNER LAW OFFICES  
Index No. 07CIV8227  
Date Filed 09/20/2007  
Office No. RL11133WD

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

RIO MAR ASSOCIATES, L.P., S.E., A DELAWARE LIMITED  
(PLAINTIFF)  
PARTNERSHIP, D/B/A THE WESTIN RIO MAR BEACH RESORT  
against  
(DEFENDANT)  
MIXSHOW POWER SUMMIT, INC., A NEW YORK CORPORATION, ETAL;

---

STATE OF NEW YORK, COUNTY OF NEW YORK SS:

SCHADRAC LAGUERRE being duly sworn, deposes and says  
that he is over the age of 18 years, not a party to the action, and resides in  
the State of New York:

That on the 25 day of September 2007 at 3:34 PM, at

33 W 19TH ST; NY, NY

he served the annexed SUMMONS IN A CIVIL ACTION, COMPLAINT AND RULE 7.1  
STATEMENT upon

MIXSHOW POWER SUMMIT, INC., A NEW YORK CORPORATION, in this action, by  
delivering to and leaving with said MR. RENE MCLEAN, MANAGING AGENT a true copy  
thereof.

Deponent describes person served as aforesaid to the best of deponents ability  
at the time and circumstances of service as follows:

Sex MALE, Color WHITE, Hair BLACK, app.age 45 YRS, app.ht 5'9", app.wt 160  
LBS

DEPONENT FURTHER SAYS, that he knew the Corporation so served as aforesaid to be  
the Corporation mentioned and described in the said SUMMONS IN A CIVIL ACTION,  
COMPLAINT AND RULE 7.1. STATEMENT.

SWORN to before me this 27  
day of September 2007

JAY BRODSKY  
Notary Public, State of New York  
No. 31-4689271  
Qualified in New York County  
Commission Expires Feb 2, 2011

---

SCHADRAC LAGUERRE  
License No.: 1021952 :bb

# **EXHIBIT C**

ABC PROCESS SERVICE, INC.  
Attorney:  
RUDNER LAW OFFICES  
Index No. 07CIV8227  
Date Filed 09/20/2007  
Office No. RL11133WC

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RIO MAR ASSOCIATES, L.P., S.E, A DELAWARE LIMITED  
(PLAINTIFF)  
PARTNERSHIP, D/B/A THE WESTIN RIO MAR BEACH RESORT  
against  
(DEFENDANT)  
MIXSHOW POWER SUMMIT, INC., A NEW YORK CORPORATION, ETAL;

---

STATE OF NEW YORK, COUNTY OF NEW YORK SS:

SCHADRAC LAGUERRE being duly sworn, deposes and says  
that he is over the age of 18 years, not a party to the action, and resides in  
the State of New York:

That on the 25 day of September 2007 at 3:34 PM , at

33 W 19TH ST; NEW YORK, NY

he served the annexed SUMMONS IN A CIVIL ACTION, COMPLAINT AND RULE 7.1  
STATEMENT upon

THE POWER SUMMIT, INC. A NEW YORK CORPORATION in this action, by delivering to  
and leaving with said MR. RENE MCLEAN, MANAGING AGENT a true copy thereof.  
Deponent describes person served as aforesaid to the best of deponents ability  
at the time and circumstances of service as follows:

Sex MALE , Color WHITE, Hair BLACK, app.age 45 YRS, app.ht 5'9", app.wt 160  
LBS

DEPONENT FURTHER SAYS, that he knew the Corporation so served as aforesaid to be  
the Corporation mentioned and described in the said SUMMONS IN A CIVIL ACTION,  
COMPLAINT AND RULE 7.1. STATEMENT.

SWORN to before me this 27  
day of September 2007

JAY BRODSKY  
Notary Public, State of New York  
No. 31-4683271  
Qualified in New York County  
Commission Expires Feb/2, 2011

---

SCHADRAC LAGUERRE  
License No. 1021952 :bb



# **EXHIBIT D**

ABC PROCESS SERVICE, INC.  
Attorney:  
RUDNER LAW OFFICES  
Index No. 07CIV8227  
Date Filed 09/20/2007  
Office No. RL11133WB

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

RIO MAR ASSOCIATES, L.P., S.E., A DELAWARE LIMITED  
(PLAINTIFF)  
PARTNERSHIP, D/B/A THE WESTIN RIO MAR BEACH RESORT  
against  
(DEFENDANT)  
MIXSHOW POWER SUMMIT, INC., A NEW YORK CORPORATION, ETAL;

---

STATE OF NEW YORK, COUNTY OF NEW YORK SS:

SCHADRAC LAGUERRE being duly sworn, deposes and says  
that he is over the age of 18 years, not a party to the action, and resides in  
the State of New York:

That on the 25 day of September 2007 at 3:34 PM , at

33 W 19TH ;NY, NY

he served the annexed SUMMONS IN A CIVIL ACTION, COMPLAINT AND RULE 7.1  
STATEMENT upon

RPM MARKETING & PROMOTION, INC., in this action, by delivering to and leaving  
with said MR. RENE MCLEAN, MANAGING AGENT a true copy thereof.  
Deponent describes person served as aforesaid to the best of deponents ability  
at the time and circumstances of service as follows:

Sex MALE , Color WHITE, Hair BLACK, app.age 45 YRS, app.ht 5'9", app.wt 160  
LBS

DEPONENT FURTHER SAYS, that he knew the Corporation so served as aforesaid to be  
the Corporation mentioned and described in the said SUMMONS IN A CIVIL ACTION,  
COMPLAINT AND RULE 7.1. STATEMENT.

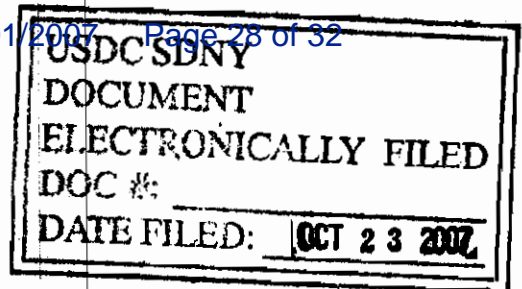
SWORN to before me this 27  
day of September 2007

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SCHADRAC LAGUERRE  
License No. 1021952 :bb

JAY BRODSKY  
Notary Public, State of New York  
No. 31-463271  
Qualified in New York County  
Commission Expires Feb. 2, 2011

# ***Exhibit C***



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
RIO MAR ASSOCIATES, L.P., S.E., a  
Delaware Limited Partnership, d/b/a THE WESTIN  
RIO MAR BEACH RESORT,

Civ. Action No. 07 CV 8227

**DEFAULT JUDGMENT**

Plaintiff,

-against-

MIXSHOW POWER SUMMIT, INC., a  
New York corporation; THE POWER SUMMIT,  
INC., a New York corporation; RPM MARKETING  
& PROMOTIONS, INC., a New York corporation;  
and RENE McLEAN, a New York resident,

Defendants.

\_\_\_\_\_  
THIS MATTER having come before the Court on Plaintiff's Motion for Entry of Default Judgment on October 19, 2007, and the Court having reviewed the pleadings of record and examined the evidence and being sufficiently advised in the premises, finds that the default of Defendants was duly entered by the Clerk of this Court; that Plaintiff's remaining claim is for a sum certain; that none of the Defendants is an infant, in the military, or an incompetent person; and that Plaintiff is entitled to the relief requested.

IT IS THEREFORE ORDERED that judgment be entered in favor of Plaintiff Rio Mar Associates, L.P., S.E. and against Defendants The Power Summit, Inc. and Rene McLean in the amount of **\$167,868.36**, plus interest at the rate of seven percent (7%) per annum, running from October 28, 2003 until paid in full.

Claims against all other defendants are hereby dismissed without prejudice.

**OCT 22 2007**

DATED this \_\_\_\_ day of \_\_\_\_\_, 2007.

SO ORDERED:

  
\_\_\_\_\_  
GEORGE B. DANIELS  
United States District Court

# *Exhibit D*

LAW OFFICES OF

**PETER M. AGULNICK, P.C.**

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**NEW YORK, NEW YORK 10007**

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**FAX (212) 656-1645**

**NEW JERSEY OFFICE:**

**237 WASHINGTON AVENUE  
HACKENSACK, NJ 07601**

**PLEASE REPLY TO THE  
NEW YORK OFFICE**

**WRITER'S E-MAIL:  
PETER@AGULNICKLAW.COM**

November 1, 2007

**BY FAX 212-233-4848**

Attn. David R. Teece, Esq.  
Rudner Law Offices  
225 Broadway, Suite 3104  
New York, New York 10007

**Re: Rio Mar Associates, L.P., S.E. v. Mixshow Power Summit, Inc. et al.  
U.S. District Court, Southern District of New York, Case No. 07 CV 8227 (GBD)**

Dear Mr. Teece:

As you know, this law firm represents Defendants Rene McLean, The Power Summit, Inc., and RPM Marketing & Promotions, Inc. This letter is to confirm our recent telephone conversation.

I informed you that the Affidavits of Service of the summons that you included with your declaration and motion for a default judgment are materially false. The most glaringly inaccuracy is that your process servers states he served a white person when, in fact, Mr. McLean is African American. You know Mr. McLean is African American because you, personally, deposed him months ago. Yet, you included these erroneous affidavits as exhibits to your motion for a default judgment.

In addition, you never served me with a courtesy copy of your motion for a default judgment. Although to do so may, perhaps, not been strictly required, it is certainly customary for attorneys to do so.

To avoid unnecessary delay in this case, I told you that I was willing to accept service on behalf of my clients if you would vacate the default judgment that you improperly procured. You have refused.

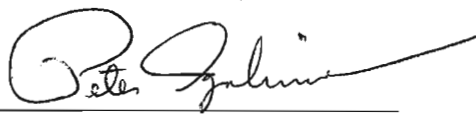
LAW OFFICES OF  
**PETER M. AGULNICK, P.C.**

Attn. David R. Teece, Esq.  
Rudner Law Offices  
November 1, 2007  
Page 2 of 2

Accordingly, I have no choice but to move to dismiss your case for lack of personal jurisdiction because you failed to properly effectuate service of process. If you change your mind, please contact me as immediately so I can avoid burdening the Court with an unnecessary motion.

Very truly yours,

PETER M. AGULNICK, P.C.

By:   
Peter M. Agulnick (PA 5030)